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August 5, 2002

BY TELECOPY

Renee Brooker, Esq.
Andrew N. Goldfarb, Esq.
Tobacco Litigation Team
U.S. Department of Justice
Civil Division, Torts Branch
Post Office Box 14524
Washington, D.C. 20044-4524

Re: *United States v. Philip Morris Inc.*, No. 99-2496 (GK) (U.S. District Court
for the District of Columbia)

Dear Counsel:

As set forth in my July 17, 2002 letter to Ms. Brooker, and as I stated in Court on July 26, 2002, Philip Morris is currently considering ways by which responsive email preserved as outlined in my July 17 letter can be made available for production in this action in the near future. As further set forth in my July 17 letter, complicating factors include the volume of email, the possibility that much of this email either may be nonresponsive, already produced in this action or duplicative, the difficulty of separating email that is responsive and not yet produced from that which is either not responsive or already produced, and the technical difficulty, if not impossibility, of recovering at least some of this information.

With these factors in mind, Philip Morris would like to discuss with you a proposal for the production of responsive email incorporating the following features:

1. Philip Morris would make email available to the government at a mutually agreeable location. Along with its vendor, Philip Morris is working to make email available for inspection in electronic format, although the final determination of the medium has not been made.

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2. Philip Morris proposes post-inspection confidentiality review of selected documents.
3. Philip Morris will screen email to be made available for privilege and will withhold potentially privileged documents. With the completion and production of the logs for any withheld privileged documents, Philip Morris anticipates producing to the government those documents initially withheld as potentially privileged but determined to be not privileged.
4. Philip Morris proposes that privilege logs will be prepared and produced in accordance with Order No. 51.
5. Philip Morris will eliminate duplicates to the extent possible.
6. While Philip Morris is narrowing as best it can the population of email only to those responsive to the government's document requests consistent with Philip Morris' prior productions, Philip Morris proposes to include in any Order a provision similar to Paragraph 1 of Order No. 123 to permit the removal of documents selected by the government that Philip Morris deems are non-responsive.
7. With respect to the general Requests for Supplementation served by the government on Philip Morris, Philip Morris has identified a set of email that may be responsive to the second set of Requests for Supplementation served on January 30, 2002 and proposes to use the attached keyword search terms to identify the responsive population. See Attachment A. Obviously, we are willing to discuss the terms to be used with the government.
8. For email that may be responsive to the Requests for Supplementation in connection with depositions,¹ Philip Morris proposes to use the attached keyword search terms to identify the responsive population. See Attachment B. Obviously, again, we are willing to discuss the terms to be used with the government.

The timing of when documents will be available for the government's review, and the timing of the production of those documents selected by the government, will depend upon various factors, including most significantly the total volume yielded by the use of the search terms described above and the government's selection rate. We will have a better idea once the search terms have been finalized and the ultimate volume to be made available is determined. Because finalizing the search terms to be used is critical to moving this process forward, I am hopeful we can discuss this matter very shortly, so that we can proceed with our planning to make available responsive email for review by and production to the government as promptly as possible.

¹ This reference is to the requests for supplementation served on January 15, 2002 (two sets), February 5, 2002, February 22, 2002 and February 26, 2002.

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I look forward to discussing the above proposed plan and a proposed Order with you at your earliest convenience.

Yours truly,



Thomas J. Frederick

TJF:mnc
Attachments

cc: Defense Counsel

Attachment A

Requests for Supplementation Served on 1/30/02

REQUEST NO. 2: All documents created on or after January 1, 2001 relating to "consensus groups" (as described by Philip Morris Incorporated's 30(b)(6) deponent on June 20, 2001, at pages 28-29), concerning any activity, deliberations, presentations, reports, and/or recommendations of such groups or any member of such groups, including without limitation groups reporting to Richard Solana, groups within World-Wide Scientific Affairs or otherwise, the "causation consensus group," "addiction consensus group," "compensation consensus group," "ETS consensus groups," "ammonia consensus group," and "nitrosamine consensus group;" and any such documents, irrespective of date, not already produced in response to RFP 432.

1. "consensus group"
2. "causation consensus"
3. "addiction consensus"
4. "compensation consensus"
5. "nitrosamine consensus"
6. "Ammonia consensus"
7. "ETS consensus"

REQUEST NO. 5: All documents created on or after January 1, 2001 relating to any study, research or investigation into the effect of: (1) any anti-smoking activities, initiatives, or campaigns; (2) any law, regulation, or limit on the sale or marketing of tobacco products; and any such documents, irrespective of date, not already produced in response RFP 469.

8. "FDA"
9. "fire safe"
10. "Ignition propensity"
11. "federal regulation"
12. DOJ
13. "accommodation"
14. "smoking ban(s)"
15. "option program"
16. "ALF"
17. "American Legacy Foundation"
18. "truth"
19. "YSP"
20. "Youth Smoking Prevention"
21. "economic impact of smoking bans"
22. "tobacco control advertising"
23. "tax"

REQUEST NO. 8: All documents created on or after January 1, 2001 relating to direct mail marketing and persons 25 or younger, including without limitation documents referring to "young adult smokers," "young male smokers," "young female smokers," "YAS," "YAM," "YAF," "GIID," and/or "government issued identification;" and any such documents, irrespective of date, not already produced in response to CRFP 140.

24. YAS
25. YAM
26. YAF
27. GIID
28. "Young Adult Smoker"
29. "Young Male Smoker"
30. "Young Female Smoker"
31. "Government Issued Identification (or ID)"
32. "(database) name allocation"
33. "name reallocation"
34. "name generation"
35. "adult smoker database"

REQUEST NO. 9: All documents created on or after January 1, 2001 relating to PM's actions, statements, decisions, or policies regarding any adjustments to the cost of past or future advertising, or any other consideration or compensation provided, based on the placement of PM's advertisement in relation to other advertisements, articles, features, or other content within written media, including without limitation magazines, newspapers or computer websites, including all references to "makegood(s);" and any such documents, irrespective of date, not already produced in response to RFPs 444-462.

36. "antithetical"
37. "makegood(s)"
38. "credit"
39. "separation guidelines"
40. "Finance"
41. "Budget"

REQUEST NO. 10: All documents created on or after January 1, 2001 relating to Internet sale of PM tobacco products and persons 25 or younger, including without limitation documents referring to "young adult smokers," "young male smokers," "young female smokers," "YAS," "YAM," "YAF," "GIID," and/or "government issued identification;" and any such documents, irrespective of date, not already produced in response to CRFP 140.

42. "Internet" and "Age"
43. "Internet" and "YAS"
44. "Internet" and "YAM"

45. "Internet" and "YAF"
46. "Internet" and "GID"
47. "Internet" and "Young Adult Smoker"
48. "Internet" and "Young Male Smoker"
49. "Internet" and "Young Female Smoker"
50. "Internet" and "Government Issued Identification (or ID)"
51. "Internet Sale"

REQUEST NO. 11: All documents created on or after January 1, 2001 concerning marketing, advertising, promotion, and/or research, that refer to "minors" "young adult smokers," "young male smokers," "young female smokers," "YAS," "YAM," "YAF," and/or persons 21 or younger; and any such documents, irrespective of date, not already produced in response to CRFPs 56 and 140.

52. YAS
53. YAM
54. YAF
55. GID
56. "Young Adult Smoker"
57. "Young Male Smoker"
58. "Young Female Smoker"
59. "Government Issued Identification (or ID)"
60. "(database) name allocation"
61. "name reallocation"
62. "name generation"
63. "adult smoker database"

Attachment B

1. "global settlements"
2. "proposed resolution"
3. "Master Settlement Agreement"
4. "MSA"
5. "McCain Bill"
6. "smoking and health"
7. "ETS"
8. "less hazardous"
9. "low tar"
10. "low nicotine"
11. "smoker compensation"
12. "CTR"
13. "Council for Tobacco Research"
14. "SAB"
15. "Scientific Advisory Board"
16. "TI"
17. "Tobacco Institute"
18. "addiction"
19. "youth marketing"
20. "YAS"
21. "YAM"
22. "YAF"
23. "GID"
24. "Young Adult Smoker"
25. "Young Male Smoker"
26. "Young Female Smoker"
27. "Government Issued Identification (GID)"
28. "nicotine manipulation"
29. "constituents"
30. "components"
31. "additives"
32. "ingredients"
33. "cigarette design"
34. "youth smoking"
35. "smoking cessation"
36. Lorillard
37. RJR
38. R.J. Reynolds Tobacco Co.
39. Brown & Williamson
40. BAT Industries
41. Liggett Group
42. FTC Test Method
43. ATCO

44. American Tobacco Co.
45. BATCo
46. Star Scientific
47. Vector Group
48. "Camel"
49. "Marlboro"
50. "Winston"
51. "Salem"
52. "Benson & Hedges"
53. "B&H"
54. "Virginia Slims"
55. "VS"
56. "Palladium XA"
57. "Merit"
58. "Salem"
59. "Newport"
60. "Omni"
61. "Accord"
62. "SCoR"
63. "Eclipse"